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MAN/00DA/LSC/2009/0056

RESIDENTIAL PROPERTY TRIBUNAL SERVICE.

LANDLORD & TENANT ACT 1985 – Section 27A

Property. 145 Clarence House, The Boulevard, Leeds, LS10 1LG

Applicant: Clarence House Management Company

Respondent. Mr. Owen N Miller

Tribunal Members:

Mrs C Hackett JP. Mr J Platt. Mr. M Simpson LL.B

5th May 2010.

DECISION.

1. **That the Service Charges Claimed for 2008, which include the amounts for Service Charge claimed in the County Court proceedings, are reasonably incurred.**
2. **That the Respondent do within 14 days of receipt of this Determination reimburse to the Applicant the Fees paid by the Applicant to the Tribunal, in the sum of £175.**

Application.

This is a reference from the Edmonton County Court, by the Order of District judge Silverman dated 1 July 2009. Those proceedings had been issued on the 12th March 2009 by Crosby Homes Ltd. against Mr Miller, claiming rent and service charges and other charges in the sum of £1295.01, together with any other rent, service charge or other charges that fall due between the date of issue and judgment.

The period to which the claim relates is not specified in the County Court proceedings. The amount claimed for rent and service charges is £1180.01 which is consistent with the balance claimed on the Service Charge statement (*Document 4 attached to Eddisons' letter to Tribunal 4th September 2009*) as at 19th December 2008 (allowing for the removal of the 6 months ground rent for 1 July 2009 – 31 December 2009, which had already been charged to the account on 20th February 2008). That is also consistent with the fact that the next following charges to the account are the Court Fees.

Directions were given by a Procedural Chairman of the Tribunal on 30th July 2009. Those Directions styled the Applicant as 'Clarence House Management Company' and the Respondent as Mr Miller. Neither party has taken issue with that designation.

Neither party has fully complied with those Directions. The Applicants' case has not been set out in the detail anticipated by the Directions. Mr Miller has not responded at all to such representations as have been made by the Applicant pursuant to the Directions. A Hearing bundle has not been agreed.

The Lease.

We have been supplied only with a specimen lease showing the landlord as The Clarence Dock Company Limited and Crosby Group Nominees Limited and showing 'The Managements' as the Clarence Dock Company Limited. It is a lengthy and detailed lease in modern form.

The Tenant has an obligation by clause 4.7 to pay the Building Service Charge and the Estate Service Charge, recoverable as rent.

The Landlord covenants (6.7), with the Tenant and the Estate Management Company, to carry out the Building Services.

The Estate Management Company covenants (7.1) with the Landlord and the Tenant (subject to payment by the tenant of the Estate Service Charge) to carry out the Estate Services.

The Building Service Charge Expenditure is set out in detail in the Fifth Schedule to the Lease. It is extensive and comprehensive and appears to authorise all the categories of expenditure for which claim is made (subject to the statutory 'reasonably incurred' requirement).

Likewise the Sixth Schedule comprehensively deals with the Estate Service charge Expenditure to like effect.

The specimen lease is in blank not only as to the identity of the tenant but also the percentage of the service charges payable. It is apparent and not challenged that Mr, Miller has a liability for 0.359% of the overall expenditure, (*letter 11 May 2009 Eddisons to Miller).*

The property and the inspection.

In view of Mr Miller deciding not to pursue his challenge, we did not inspect the property.

The Hearing.

A Hearing was arranged for11.30am on Wednesday 5th May at the Queens Hotel, Leeds, to follow the inspection. In view of Mr Miller deciding not to pursue his challenge, the hearing was vacated and replaced with a decision meeting.

The Parties' representations.

The Applicant's representations were made by Eddisons, acting as managing agents for the Applicant, and comprising their letter to the Tribunal offices dated 4th September 2009, enclosing copy correspondence between the parties, the unaudited service charge accounts to 30 September 2008, the budgets to 30 September 2009 and the statements re outstanding service charges sent to Mr. Miller for the period Oct 2007 – December 2009.

The copy letter and enclosures was acknowledged by Mr Miller on 23 September. He sought confirmation that that represented the Applicant's statement of case. On 29th September Eddisons (Mr. Willans) said it was not, and, notwithstanding the Tribunals Directions, invited Mr. Miller to make Eddisons aware of his case.

On being reminded by the Tribunal secretariat of the Directions, Mr. Willans confirmed that the letter and enclosures of 4 September 2009 constituted the Applicant's case.

Apart from correspondence relating to administrative matters and the discussions which were said to be taking place re possible settlement, no further representations were made to the Tribunal until the arrival (late) of the Applicant's Bundle on or about 22 April 2010. That Bundle enclosed copies of correspondence from Eddisons to Mr. Miller (but, unhelpfully, none of the letters from Mr. Miller in reply, or in response to which some of Eddison's letters were written), the items enclosed with their letter of 4 September to the Tribunal and some further accounts and budgets for 2009-2010.

Mr Miller's response to this Bundle, in his letter of 23 April was to ask for more detailed documentation in respect of the 2008 service charge, and to aver that the only issue before the Tribunal was the 2008 service charge , which had been referred by the Court. He confirmed, without particularity, that he did not challenge all of the service charge as unreasonable. Beyond that, and his statement to the Court in support of his application to set aside the default judgment that he wished to contest the charges as 'unreasonable, unreasonably incurred and not payable', we have had no representations on the substantive issues from Mr. Miller.

By his fax of 14.55 pm of 3rd May 2010 (Bank Holiday Monday) Mr Miller indicated that he had 'decided to make a commercial decision and settle the matter transferred to the LVT from the Court'.

The Law.

Landlord & Tenant Act 1985

19 Limitation of service charges: reasonableness

(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period—

(a) only to the extent that they are reasonably incurred, and

(b) where they are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard;

and the amount payable shall be limited accordingly.

(2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have

been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

20C Limitation of service charges: costs of proceedings

(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or leasehold valuation tribunal, or the Lands Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

27A Liability to pay service charges: jurisdiction

(1) An application may be made to a leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, as to—

(a) the person by whom it is payable,

(b) the person to whom it is payable,

(c) the amount which is payable,

(d) the date at or by which it is payable, and

(e) the manner in which it is payable.

(2) Subsection (1) applies whether or not any payment has been made.

(3) An application may also be made to a leasehold valuation tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to—

(a) the person by whom it would be payable,

(b) the person to whom it would be payable,

(c) the amount which would be payable,

(d) the date at or by which it would be payable, and

(e) the manner in which it would be payable.

The Determination

Only the period for which the County Court proceedings were issued has been transferred to us. No additional application has been made for any other period. We have gleaned that the period in question is 1 Jan 2008 - 31 Dec. 2008 plus the ground rent claimed as due in advance on 1 January 2009 of £250, plus the Interim Service charge for the quarter 1 January 2009 – 31 March 2009. We can comment only, that, to the extent that subsequent years are in keeping with our findings for 2008, any challenge to those subsequent years, other things being equal, may be regarded as frivolous or vexatious.

Based on the statement of account enclosed with the Eddisons letter of 4th September 2009, it is apparent that of the £1180.01 claimed £250 is in respect of unpaid Ground Rent. That is outside our jurisdiction. Of the balance of £930.01 some £279.00 relates to interim charges for the first quarter of 2009. That is only an estimate. It is authorised by the Lease as an estimate. The Lease provides for adjustments once the precise figures are known. If the estimate is broadly consistent with the previous year's expenditure, or, as in this case, an explanation of the increase is given (*Eddisons letters of 12 November 2008 ,and 12th and 28th May 2009 and 28th July 2009)* it is unlikely that a Tribunal will find those interim charges to be unreasonable.

The nub of the issue for our determination is whether the remaining £801.49 (being the remainder of the balance claimed in the Court proceedings plus the £150.48 paid by Mr. Miller on 27th February 2008.) charged for 2008 is reasonably incurred.

Mr Miller no longer challenges them, having taken the commercial decision not to do so. There is nothing obviously unreasonable arising from the accounts and paperwork supplied by the Applicant's managing agents. We have no evidence upon which we might properly conclude that the service charge demands before us are unreasonable. We accordingly determine that they are reasonable in the amount claimed in the County Court proceedings.

Costs and Fees.

There is no Section 20C application before us. We therefore make no determination in that regard.

The applicant has paid a Court Fee of £75 and (taking that sum into account under Regulation 4 of the 2003 Fees regulations) a £25 application fee to the Tribunal and £150 Hearing Fee to the Tribunal. The Applicant requests reimbursement pursuant to Regulation 9. Mr Miller has never offered any substantive evidence. He has not

engaged with the Tribunal process and the Tribunals Directions. He has conceded the claim at the last minute and proffered settlement in full.

The costs in the County Court are a matter for the learned District Judge. We determine and Order that Mr Miller reimburses the Applicant the sum of £175 Fees paid to the Tribunal, payable within 14 days of service upon him of this Determination.

Our understanding is that Mr Miller has paid or is in the process of paying, to the Applicant, the County Court claim and fixed County Court costs on issue. That is a matter between the Parties themselves and the County Court.

Martin J Simpson.

Chairman